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CLEARINGHOUSE RULE 97-069

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. Throughout the rule-making order, the title of a provision which is being amended must be shown, even if the title is not being amended. [See s. 1.05 (3) (d), Manual.] For example, if a subsection is amended, the title of the subsection, but not of the section, should be reproduced.

b. In s. DOC 306.02 (1), the phrase “of adult institutions, department of corrections,” should be stricken since the phrase is included in the definition of the term “division” in s. DOC 306.02 (5).

c. In SECTION 9, “DOC 306.02 (1) renumbered” should read, “DOC 306.02 (10) is renumbered.”

d. In SECTION 10, after the treatment clause, it is necessary to state the section number, “DOC 306.05,” only once. This designation can be eliminated in each of the following subunit treatments. The entire rule should be reviewed for this practice.

e. In s. DOC 306.07 (1) (d), the word “to” must be inserted after “to compel another to act or” in order to reflect current rule text.

f. In s. DOC 306.07 (1) (b), the word “in” should be replaced with the word “of” in order to reflect current rule text.

g. In SECTIONS 22 through 25, the cites to s. DOC 307.07 in the treatment clauses should be to s. DOC 306.07.

h. In s. DOC 306.08 (4) (d), the word “Fundamental” should be replaced with the word “Fundamentals,” in order to reflect current rule text.

i. The treatment clause of SECTION 50 should read: “DOC 306.07 (5) (c) is repealed and recreated to read:” and SECTION 51 should be deleted.

j. The treatment clause of SECTION 55 should read: “DOC 306.08 (1) is repealed.” SECTION 56 (or a later SECTION) should then create s. DOC 306.09 (1). [See, also, comment n.]

k. In s. DOC 306.09 (3) (c), “f” should be replaced with “of.”

l. In SECTION 60, “DOC 306.08 (4) (B)” should be replaced with “DOC 306.08 (4) (b).”

m. In s. DOC 306.09 (4) (b) 1. and 2., the periods should be underscored. Also, in s. DOC 306.09 (4) (b) 2., the semicolon at the end of the sentence should be stricken through.

n. The treatment clause of SECTION 65 should read: “DOC 306.08 (5) is repealed.” Another SECTION should create s. DOC 306.09 (5). A unit of rule text should not be repealed under one number and then recreated under a new number. Separate SECTIONS repealing and recreating should be used. The entire rule should be reviewed for this practice.

o. In s. DOC 306.11 (3) (a), a comma should be inserted after “~~bureau of clinical services~~” in order to reflect current rule text.

p. In s. DOC 306.11 (3) (d) 6., “give” should be replaced with “given” in order to reflect current rule text.

q. Section DOC 306.13 (1) should probably be newly created. In the alternative, the treatment of s. DOC 306.13 should be separated into three SECTIONS. The first SECTION should renumber and amend those provisions prior to the creation of s. DOC 306.13 (1) (p), which appears in the text to be par. (L). Section DOC 306.13 (1) (p) should be created in a separate SECTION. The last SECTION then should continue the renumbering and amending of s. DOC 306.13.

r. In s. DOC 306.13 (7), “the” at the beginning of the sentence must be capitalized.

s. In s. DOC 306.14, the word “Search” at the beginning of the last sentence should be replaced with the word “Searches” in order to reflect current rule text.

t. In s. DOC 306.15 (1), the word “search” in the last sentence should be replaced with the word “searched” in order to reflect current rule text.

u. In s. DOC 306.17 (1) (a), if the definition of the term “personal search” is retained in this paragraph, the phrase “A personal search is” should be replaced by the phrase “1. In this paragraph, “personal search” means.” Subdivision 1. then should be renumbered as subd. 2.

Similarly, par. (b) should begin with the phrase “1. In this subsection, “strip search” means.” All of the material following the first sentence should be numbered as subd. 2. Subdivision 1. of the rule then should be renumbered as subd. 3. All of the paragraphs in sub. (1) should be reviewed for these changes. In addition, if the definitions contained in these paragraphs are intended to apply throughout the section, then a separate subsection containing these definitions should be created. Further, if these definitions are intended to imply throughout the chapter, then they should be inserted in the chapter’s definition section.

v. In s. DOC 306.17 (3) and (5), the word “should” should be replaced with the word “shall” or “may” to clarify the meaning of the subsection.

w. In s. DOC 306.18 (2), the phrase “~~all~~ objects which shall” should be replaced with the phrase “~~all~~ objects which may” in order to reflect current rule text. Also in the last sentence of that subsection, “objects” should be replaced with the word “objects.”

x. In the first sentence of s. DOC 306.19 (1), it appears that the word “search” should be replaced by the word “searched.”

y. In s. DOC 306.20 (4), “~~her~~” should be replaced with “~~he~~” in order to reflect current rule text.

z. In s. DOC 306.21, the phrase “~~of the division~~” should be inserted before the phrase “~~of adult institutions~~” in order to reflect current rule text.

aa. The treatment clause of SECTION 91 should state that s. DOC 306.24 (1) (a) to (d), as renumbered, is amended because not all of s. DOC 306.24 (1) is amended. This comment also applies to the treatment clauses of SECTIONS 92 and 97.

ab. In the treatment clause of SECTION 96, “(6)” must be inserted after “DOC 306.24.”

ac. In SECTION 102, the wrong sentence or paragraph is cited because there are not five sentences in paragraph 1.

ad. In SECTION 105, it appears that sentence 4 is a citation. If the intent is to delete the last sentence and its citation, it is sufficient to delete sentence 3. The amendment to sentence 6, paragraph 9, should read, “. . . correctional institutions ~~in recent years~~.” Also, it appears that the amendment to sentence 4 in paragraph 20 is actually an amendment to sentence 5 in paragraph 10. Finally, in that section, the notation “f” after “(~~Proposed Official Draft 1962~~)” should be deleted.

ae. In SECTION 106, it appears that the amendment to paragraph 2 amends sentence 5 instead of sentence 6.

af. In SECTION 107, it appears that the amendment to paragraph 7 amends sentence 4 instead of sentence 3. The amendment to paragraph 14 should strike through “CS.” Also, “. . .” following “~~in sub (12)~~” should not be stricken through.

ag. In SECTION 108, the amendment to paragraph 30 is an amendment to paragraph 3.

ah. In SECTION 111, it appears that the amendment to paragraph 2 is actually an amendment to paragraph 1.

ai. In SECTION 112, “~~306.15~~” should be replaced with “~~306.14~~” and “306.16” should be replaced with “306.15.” The amendment to paragraph 3 should be reviewed because paragraph 3 does not contain six sentences. Also, the sentence should begin with a capital letter.

aj. In SECTION 113, the amendment to paragraph 3 should be reviewed because there are not five sentences in that paragraph.

ak. In SECTION 114, the amendment to paragraph 4 appears to intend to amend sentence 8 instead of sentence 7. It is unclear what is to be amended. The amendment to sentence 1, paragraph 1, should be reviewed. It is unclear what paragraph and sentence this amendment proposes to amend. Also, in the amendment to paragraph 16, “Sub (3 1) (~~e~~ and ~~f~~ b)” should be replaced with “Sub. (3) (~~e~~) and (~~f~~) (1) (b).” This type of change could be made to other amendments to the appendix. Finally, in the amendment to paragraph 18, it is unclear what the drafter intends to amend with “Sub. (5 1) (d)” and “correctional health.”

al. In SECTION 115, the text creating sentences 4, 5 and 6 in paragraph 10 should be reviewed. There should not be any striking or underscoring in creating text.

am. SECTION 120 should be deleted because there is no note to s. DOC 306.215.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. DOC 306.05 (4), the cite in the underscored text is incorrect. If this cite is renumbered in another rule-making order, the drafter should so state in the analysis, in a note or in the treatment clause. Also, this rule should not be promulgated prior to the renumbering in the other rule-making order. This comment also applies to s. DOC 306.10 (3).

b. In s. DOC 306.09 (4) (c), periods should be inserted after the “1” and the “4” in the cite to par. (b) 1. to 4.

c. In s. DOC 306.17 (a) 1. e., the cite to s. DOC 306.16 should be to s. DOC 306.15. The same change should be made in s. DOC 306.17 (b) 1. d.

d. In SECTION 115, in sentence 4, paragraph 7, the cite to s. DOC 316.16 (1) (a) and (b) should be changed to s. DOC 306.17 (1) (a) and (b).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the first paragraph of the analysis, the phrase “rule was” should be replaced by the phrase “rules were.” In the paragraph numbered as paragraph 9, it appears that the word “intoxication” should be replaced by the word “intoxicating.” Finally, in the paragraph numbered as paragraph 12, it appears that the word “firearm” should be replaced by the word “firearms.”

b. In s. DOC 306.07 (1) (a), the definition for “authority” is not clear. The drafter should clarify that the “authority” is the highest ranking individual, based on the line of succession, who is available in the institution.

c. In s. DOC 306.07 (1) (g), the definition should clarify to whom the firearms are issued.

d. In s. DOC 306.07 (1) (h), the definition for “line of succession” should clarify that the positions are listed in order of authority.

e. In s. DOC 306.07 (1) (j), it may be clearer to replace the phrase “person designated by the line of succession” with “authority.”

f. In s. DOC 306.07 (5) (e), the sentence would be clearer if “who escapes” was inserted before “while being transferred.”

g. In s. DOC 306.09 (5), the phrase “for use” is repetitive and could be deleted.

h. Section DOC 306.09 (1) should begin with the phrase “In this section.”

i. In s. DOC 306.09 (3), it may be helpful to insert “any of” before “the following emergency situations.”

j. In s. DOC 306.10 (1), the definition would be clearer if the word “the” before the phrase “free movement” was deleted or if the sentence ended with a phrase such as, “of the inmate.”

k. In s. DOC 306.11 (3) (d) (intro.), “must” should be replaced with “shall.”

l. Section DOC 306.11 (3) (d) 1. should be rewritten to read: “The inmate’s full name and number and the date the inmate was placed in restraints.”

m. Section DOC 306.16 (1) would be clearer if the word “the” was inserted before the phrase “supervising officer.”

n. In s. DOC 306.17 (1) (b) 1. e., the phrase “in the absence of the shift supervisor” is somewhat vague. Perhaps the drafter should clarify whether it means that the staff member may use his or her own discretion only when the shift supervisor is not present in the facility or if the supervisor is simply unavailable to discuss the situation at the time.

o. In s. DOC 306.17 (1) (d) 1. h., the definition of the the term “biological specimen analysis” is not enhanced by the use of the phrase “or any other biological specimen analysis.” If some other form of a biological specimen analysis other than a DNA analysis exists, it should be described.

p. In s. DOC 306.17 (5) (a), it may be clearer to use the phrase “Observation by the staff member” instead of “the observation of a staff member.”

q. In s. DOC 306.17 (5) (c), the word “a” should be replaced by the word “the.”

r. In s. DOC 306.18 (8) (a), the phrase regarding turning any object seized over to the sheriff or local law enforcement agency representative could be placed in a separate sentence since it is not applicable if the visitor appears to be under the influence of an intoxicant. This comment also applies to s. DOC 306.19 (2) (a).

s. In s. DOC 306.19 (2) (a), “so” before “detain the staff member” should be deleted.

t. In the treatment clause of SECTION 90, “(tittle)” should be replaced with “(title).”

u. In s. DOC 306.24 (6), the phrase “at the discretion of” should be replaced by the word “by.”

v. In SECTION 105, in the first sentence of the addition to paragraph 1, “n” should be replaced with “on.”

w. In SECTION 107, in the amendment to paragraph 1, quotation marks should be placed around “Incapacitating agent” in the two sentences which list what the term includes and does not include. Also, “agent” should be inserted before “does not include.” In the text for the recreation of paragraph 10, in the first sentence, “are” should be replaced with “area.” In the text for the recreation of paragraph 11, the word “manufacture’s” should be replaced by the phrase “the manufacturer’s.” In the text for the recreation of paragraph 12, in the first sentence, “create” should be replaced with “creates.” In the second sentence, “IN” should be replaced with “In.” In the text for the recreation of paragraph 13, in the second sentence, “hen” should be replaced with “when.”

x. In SECTION 112, the repeal and recreation of sentence 3, paragraph 3, should be reviewed. The new sentence does not relate to the same issue as the rest of the paragraph.

y. In SECTION 115, in the text creating sentences 4, 5 and 6 in paragraph 10, a comma should be inserted after “Sec. 302.095, Stats.” Also, the phrase “detained by staff to turn over” may be clearer as “detained by staff and turned over.”